IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.5 OF 1996

Shri Abdul Gani Adam Patel,)
Kachchhi Mohallah, Haribhai Chawl,)
Panvel, Taluka Panvel, District)
Raigad.) ... Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra)

2. Ms. Seema Jayantilal Badiyani,)
Pada Mohalla, Oppo. To Baloo)
Miyan Chawls, Room No.105,)
Panvel – 410 206, Dist. Raigad.) ... Respondents

Mr. Dhanashree M. Shinde, appointed advocate, for the appellant.

Ms. M.M. Deshmukh, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 21ST AUGUST, 2007.

ORAL JUDGEMENT:-

1. The appellant was tried in the court of IInd Additional Sessions Judge, Raigad-Alibag in Sessions Case No.206 of 1990 for offences punishable under sections 307, 342, 504 and 506 of the Indian Penal Code (for short, “the IPC”). For the sake of convenience, the appellant is referred to as “the accused” in this judgment.

2. The case of the prosecution as disclosed by PW-1 Seema, the injured eye-witness is that she resides along with her parents, uncle, aunt, brother and sisters at Panvel. At the time of incident, she was studying in VIIIth standard in L.B. Gujrathi High School, Panvel. Her father Jayantilal Badiyani was working in a grocery shop at Panvel. According to her, on 27/6/1990, at about 10.00 a.m., she along with her sister Prafulla was going to the house of their uncle Kishorbhai. When they reached near a Mosque, the accused obstructed her and told her to accompany him. According to Seema, she told him that she would not accompany him. Her sister Prafulla also told him that she would not accompany him. She and her sister Prafulla then returned to their house. She narrated the incident to her mother Madhuben. Her mother told her that they should inform about the incident to Badrubai, who was an

elderly lady residing in the locality. They went to Badrubai and narrated the incident to her. Badrubai told them that the accused would not behave badly with PW-1 Seema.

3. PW-1 Seema has further stated that she along with her mother Madhuben, sister Prafulla went to one Salimbhai and told him about the incident. However, Salimbhai did not respond to the complaint. Thereafter, they returned to the house of Badrubai. As PW-1 Seema had to go to School, at about 10.30 a.m., she came out of the house of Badrubai. She started going to her house. The accused met her at some distance from the house of Badrubai. The accused dealt blows of knife on her stomach, on the right side abdomen, on the back and on the right hand. She sustained bleeding injuries. Her mother Madhuben and sister Prafulla were following her. They took her to the Government Hospital, Panvel. Police reached the hospital and recorded her statement. Because she was having knife injury on her right hand, she put her thumb impression on the complaint, Ex-16.

4. According to PW-1 Seema, she was then shifted to Sion Hospital for further treatment. She was an indoor patient for 15 to

16 days. She was discharged thereafter.

5. On the basis of the complaint Ex-16, the investigation was set into motion. The prosecution examined eight witnesses. The prosecution is heavily relying on the evidence of PW-1 Seema, who is an injured eye-witness and her sister PW-2 Prafulla. The prosecution has also examined PW-4 Madhuben, the mother of PW-1 Seema. Details of investigation have been given by PW-7 PSI Madhukar More, who was, at the relevant time, attached to the City Police Station, Panvel. The prosecution has also examined PW-8 Abasaheb Sonawane, who was, at the relevant time, attached to the City Police Station, Panvel. The prosecution has also examined PW-5 Dr. Ramrao Kendre, who was working as a medical officer at Panvel. He has produced the indoor case papers of PW-1 Seema dated 29/6/1990, Ex-29. He has also produced the medical certificate issued by him on 20/9/1995, which is at Ex-30.

6. The accused pleaded not guilty to the charge. According to him, he had a love affair with PW-1 Seema. On 27/6/1990, in the morning, he asked PW-1 Seema to accompany him. But she told

him that she would not accompany him. Therefore, he pushed her. PW-1 Seema fell on a machine, which mixes cement and pieces of stones. On account of the fall, she sustained injuries.

7. After perusing the evidence on record, the learned Sessions Judge came to a conclusion that the prosecution has proved its case beyond reasonable doubt so far as offence punishable under section 307 of the IPC is concerned. He, therefore, convicted the accused for the said offence and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/- in default of payment of fine, the accused is to undergo further rigorous imprisonment for two months. Out of the fine amount, Rs.1,000/- was directed to be paid to the complainant PW-1 Seema. The accused was acquitted of offences punishable under sections 342, 504 and 506 of the IPC. Being aggrieved by his conviction and sentence under section 307 of the IPC, the accused has approached this court.

8. One Mr. G.M.M. Zaveri has filed his vakalatnama for the appellant-accused. This appeal was on my board on 13/8/2007. It

was called on for hearing at 11.00 a.m. Mr. Zaveri was not present and, therefore, it was kept back till 3.00 p.m. On my instructions, the office contacted Mr. Zaveri's residence and informed that the appeal was at serial no.1 on my board and Mr. Zaveri should remain present in the court. However, on 13/8/2007 at 3.00 p.m. also Mr. Zaveri was not present. Hence, the appeal was adjourned to 14/8/2007 at 11.00 a.m. On 14/8/2007 also when the matter was called out Mr. Zaveri did not remain present. Hence, by detailed order dated 14/8/2007, in the light of the judgment of the Supreme Court in ***Rishi Nandan Pandit & Ors. v. State of Bihar (1999) 8 SCC 644***, I appointed Ms. Dhanashree M. Shende to appear for the accused and assist me. Accordingly, Ms. Shende has assisted me. I have heard her at some length in support of the appeal. The learned counsel contended that the trial court erred in convicting the accused under section 307 of the IPC. She submitted that PW-1 Seema was examined at LTMG Hospital, Sion. The learned counsel relied on Ex-27, the certificate issued by LTMG Hospital, Sion where PW-1 Seema was treated during the period 27/6/1990 to 11/7/1990. She submitted that this certificate states that PW-1 Seema had suffered contused

lacerated wounds. According to the learned counsel, these injuries are not consistent with the case that the accused stabbed PW-1 Seema with knife. The learned counsel submitted that there is a variance in the medical certificates and the benefit of variance must go to the accused. According to her, the defence of the accused that PW-1 Seema sustained injuries on account of fall on the cement mixing machine is prababalised. The learned counsel contended that the prosecution has examined all interested witnesses. It is risky to rely on the evidence of the interested witnesses and convict the accused. She submitted that, therefore, the order of conviction and sentence be set aside.

9. Ms. Deshmukh, the learned A.P.P. on the other hand, submitted that the evidence of PW-1 Seema and PW-2 Prafulla and PW-4 Madhuben is consistent and worthy of credence. According to the learned A.P.P., the accused has rightly been convicted and no interference is necessary with the impugned order.

10. I have already reproduced the gist of evidence of PW-1 Seema. She has stated how the accused stabbed her when she

refused to go with him. It is suggested in the cross-examination that she had love affair with the accused. It is pertinent to note that the accused had not denied his presence at the scene of offence but has come out with a case that PW-1 Seema had a fall on the cement mixing machine when he pushed her and that is why she sustained the injuries. The evidence of PW-5 Dr. Kendre, who had examined PW-1 Seema on 27/6/1990 at about 11.20 a.m. establishes that PW-1 Seema had sustained three stab injuries and had suffered three incised wounds. PW-5 Dr. Kendre has stated that he had taken the right thumb impression of PW-1 Seema on the case papers. PW-5 Dr. Kendre has proved the case papers dated 29/6/1990 as well as the medical certificate issued by him dated 20/9/1995 and he has stated that the injuries stated in the case papers are sufficient to cause the death of the patient. PW-5 Dr. Kendre's evidence supports the evidence of PW-1 Seema. There is no reason for PW-5 Dr. Kendre to falsely involve the accused. PW-5 Dr. Kendre is an independent witness. Therefore, that PW-1 Seema sustained injuries on 27/6/1990 can hardly be disbelieved.

11. The accused has not denied his presence at the scene of

offence. He has stated in his statement recorded under section 313 of the Criminal Procedure Code that he had told PW-1 Seema to accompany him and because she did not accompany him, he pushed her. Therefore, not only that the accused has admitted his presence at the scene of offence but he has also admitted that he was annoyed with PW-1 Seema because she refused to accompany him and, therefore, he pushed her. Therefore, it is established that the accused had become violent.

12. PW-1 Seema's evidence is supported by the evidence of her sister PW-2 Prafulla. She has corroborated the evidence of PW-1 Seema on the aspect of the accused attacking PW-1 Seema with a knife. PW-2 Prafulla has been cross-examined. However, she has not deviated from her stand in the cross-examination. PW-4 Madhuben, the mother of PW-1 Seema has also supported the version of PW-1 Seema. Hence, I have no hesitation in concluding that PW-1 Seema was attacked by the accused and the story that he pushed PW-1 Seema and she fell on the cement mixing machine and sustained the injuries is concocted and cannot be accepted.

13. It is well settled that conviction can be based on the evidence of interested witnesses if it is found to be cogent and consistent. In this case, in my opinion, all the three witnesses are consistent on the aspect of attack on PW-1 Seema. Their evidence is supported by the medical evidence. Certain minor omissions pointed out to me by the learned counsel for the accused, in my opinion, do not affect the substratum of the prosecution case. I, therefore, find no hesitation in placing reliance on the evidence of PW-1 Seema and her sister PW-2 Prafulla and her mother PW-4 Madhuben.

14. The defence has heavily relied on the alleged discrepancies in the medical certificate, Ex-27 issued on 8/8/1990 on the one hand and the evidence of PW-5 Dr. Kendre and the case papers produced by him at Ex-29 and the medical certificate issued by him on 20/9/1995, which is at Ex-30 on the other hand. According to the defence, Ex-27 shows the nature of injuries as contused lacerated wound whereas PW-5 Dr. Kendre has stated that they were incised wounds, having sharp margins.

15. This submission deserves to be rejected. I have carefully read Ex-27 medical certificate dated 8/8/1990. It does not describe

the injuries as contused lacerated wounds. The observation made to that effect by the learned judge is incorrect.

16. PW-5 Dr. Kendre has stepped in the witness box. He has stated that he had examined PW-1 Seema on 27/6/1990 at 11.20 a.m. He has explained the injuries suffered by PW-1 Seema. He has proved the case papers dated 27/6/1990, Ex-29 and the certificate issued by him, which is at Ex-30. In case paper, Ex-29, injuries suffered by PW-1 Seema are described, inter alia, as incised wounds and stab wounds. PW-5 Dr. Kendre's evidence inspires confidence. As I have already stated, PW-5 Dr. Kendre is an independent witness, who has no axe to grind against the accused. He has no reason to falsely involve the accused. Besides, the evidence of the injured witnesses PW-1 Seema, her sister PW-2 Prafulla and her mother PW-4 Madhuben is consistent with the medical evidence. Needless to say that the oral evidence always overrides the medical evidence. Therefore, in case there is any discrepancy, the conviction can be sustained on the basis of the evidence of the eye-witnesses. However, in my opinion, the evidence of PW-5 Dr. Kendre, the case papers produced by him and the certificate issued by him lend corroboration to the evidence

of the eye-witnesses.

17. In the circumstances aforestated, in my opinion, the prosecution has established that the accused attacked PW-1 Seema with a knife and caused her injuries which could have caused her death. Injuries were caused on the vital part of her body and PW-1 Seema had to be hospitalized for a considerable period. I have no hesitation in concluding that the learned Sessions Judge has rightly convicted the accused. The prosecution has proved its case to the hilt. The defence of the accused is patently false. Hence, no interference is necessary with the impugned order. The appeal is dismissed.

[SMT. RANJANA DESAI, J.]